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15 and L.V.

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18 Estella Medrano, Individually; L.V. A Minor
19 Child, Individually,

20 Plaintiffs,

21 v.

22 The City of Phoenix, A Political Subdivision
23 of The State of Arizona, Phoenix Police
24 Department, Joe Yahner, Acting Chief of
25 Police and Jane Doe Yahner, Husband and
26 Wife, Robert Diventi and Jane Doe Diventi,
27 Husband and Wife; David Hough and Jane
28 Doe Hough, Husband and Wife; Aaron Kriss
and Jane Doe Kriss, Husband and Wife;
Benjamin Denham and Jane Doe Denham,
Husband and Wife; Pamela Zielin and John
Doe Zielin, Wife and Husband; Mykel Moller
and Jane Doe Moller, Husband and Wife; John
Does I-X; Jane Does I-X Black and White
Corporations I-X; ABC Partnerships I-X,

Defendants.

CASE NO:

COMPLAINT

CIVIL RIGHTS ACTION
(42 U.S.C. § 1983)
JURY TRIAL DEMANDED

Plaintiffs Estella Medrano (“Ms. Medrano”) and L.V. (“L.V.”) collectively,
“Plaintiffs”), by and through undersigned counsel, state the following Complaint against
Defendants:

JURISDICTION AND VENUE

1. Plaintiffs bring this action under the Civil Rights Act, 42 U.S.C. §§ 1983,
1985, and 1988.

1 2. This Court has jurisdiction pursuant to 28 U.S.C § 1331, which gives district
2 courts original jurisdiction over civil actions arising under the Constitution, laws, or treaties
3 of the United States, and 28 U.S.C. § 1343(a), which gives district courts jurisdiction over
4 actions to secure civil rights extended by the United States government.

5 3. Venue is appropriate in this judicial district under 28 U.S.C. § 1391(b)
6 because the events that gave rise to the Complaint occurred in this district.

7 **PARTIES**

8 4. Plaintiffs reside in Maricopa County, State of Arizona.

9 5. Ms. Medrano is an unmarried adult woman; L.V. is Ms. Medrano's minor
10 child.

11 6.

12 7. Defendant City of Phoenix (hereinafter "City") is a political subdivision of the
13 State of Arizona that acts through its employees, agents, and independent contractors.

14 8. Defendant Joe Yahner and Jane Doe Yahner (hereinafter "Yahner") are
15 husband and wife who at all times alleged herein were acting on behalf of the marital
16 community and resided in Maricopa County, State of Arizona.

17 9. At all times material hereto, Defendant Yahner was the acting Chief of Police
18 for the City of Phoenix Police Department ("PPD") with ultimate authority to control and
19 responsibility for the actions of its officers and agents, and with the authority and
20 responsibility to establish policies, practices, customs, procedures, protocols, and training
21 for the PPD. Joe Yahner is named herein in both his official and individual capacities.

22 10. Defendants Robert Diventi, David Hough, Aaron Kriss, Pamela Zielin,
23 Benjamin Denham, and Mykel Moller (the "Police Officer Defendants") are, upon
24 information and belief, married and were acting (at all times) on behalf of and for the
25 benefit of their respective marital communities and resided in Maricopa County, State of
26 Arizona.

27 11. At all times alleged herein, the Police Officer Defendants were employed by
28

1 the PPD and were acting under the supervision and control of acting police chief, Yahner.

2 12. The Police Officer Defendants were, at all times alleged herein, acting within
3 the course and scope of their employment, for the benefit of their employer, and as agents of
4 the City and PPD.

5 13. Acting individually and in concert and/or with common knowledge, the Police
6 Officer Defendants took actions or failed to take actions and their actions or inaction caused
7 Plaintiffs the injuries alleged herein.

8 14. Fictitiously named Defendants, John and Jane Does I-X, Black and White
9 Corporations I-X, and ABC Partnerships I-X, upon information and belief, are liable for the
10 acts complained of herein, but whose true identities are unknown to the Plaintiffs. Plaintiffs
11 will request the Court's leave to amend their Complaint to insert the true names of the
12 fictitiously-named Defendants when said names are known to Plaintiffs, and to amend these
13 allegations as appropriate.

14 15. Each of the Defendants conspired, acted pursuant to a joint venture, and acted
15 in concert with each other to commit the wrongful conduct alleged herein.

16 16. Defendants engaged in a pattern of unlawful and tortious activity as a *de facto*
17 association and/or enterprise with a common purpose.

18 17. Each of the Defendants conducted or participated (directly or indirectly) in the
19 common *de facto* association and/or enterprise.

20 18. The City is liable for all acts and omissions of its employees, agents, and
21 independent contractors because of their non-delegable duties and the doctrine of vicarious
22 liability.

23 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

24 19. On May 18, 2011, Mrs. Medrano was 23 years old. Her daughter, Plaintiff
25 L.V., was approximately six weeks old.

26 20. On May 18, 2011, Ms. Medrano celebrated her younger brother's graduation
27 from middle school and watched a movie with family at her grandmother's house. Ms.
28

1 Medrano spent the evening alone with her newborn daughter at their home near South
2 Mountain.

3 21. Just after 10:00 p.m. on May 18, 2011, unbeknownst to Ms. Medrano, a
4 Hispanic male in dark clothing and a Hispanic female robbed a Circle K convenience store
5 at gunpoint near 73rd Avenue and Thomas Road and fled on foot.

6 22. The entire robbery was captured on the Circle K's closed-circuit security
7 surveillance system.

8 23. The only eye-witness to the robbery was the store's clerk, Jagmeet Bains.

9 24. When the perpetrators fled the scene, Mr. Bains called 911.

10 25. PPD responded to the 911 call and began to search for the suspects in the
11 vicinity of 73rd Avenue and Thomas Road.

12
13 **A. AN INVESTIGATION THAT BEGINS AND ENDS WITH ESTELLA MEDRANO**

14 26. PPD Officers Robert Diventi (# 8593) and Aaron Kriss (#8423) were the first
15 officers to arrive on scene at the Circle K.

16 27. PPD Officer David Hough began to search for the suspects in the vicinity of
17 73rd Avenue and Thomas Road.

18 28. Officers Diventi and Kriss left the scene to assist Officer David Hough
19 (#9267) in his pursuit of two suspects: an unidentified Hispanic male in dark clothing and a
20 "heavyset Hispanic female" wearing a red Arizona Diamondbacks pullover sweater.

21 29. When the suspects were spotted by Officer Hough, they ran in different
22 directions.

23 30. Once the suspects ran in different directions, Officer Hough chased the male
24 suspect on foot. Officer Hough did not pursue the female suspect.

25 31. Ultimately, Officer Hough lost sight of both suspects without apprehending
26 either.

27 32. Approximately one hour later, PPD officers found the male suspect—later
28

1 identified as Miguel Hernandez—hiding in a backyard shed in the neighborhood
2 surrounding the Circle K.

3 33. Officer Hough arrested Mr. Hernandez and read him a *Miranda* warning.

4 34. Mr. Hernandez invoked his right to remain silent and said nothing to PPD
5 investigators about the crime or his female accomplice.

6 35. Officer Hough collected (as evidence) a red Arizona Diamondbacks pullover
7 sweater after finding it discarded beside a tree near the scene of the crime.

8 36. The red Diamondbacks sweater matched the description of the sweater worn
9 by the female accomplice in the Circle K robbery.

10 37. Upon information and belief Officer Hough and PPD officers did not inspect
11 or test the red Diamondbacks sweater for hairs or any other traces of the suspect's DNA.

12 38. To this day, upon information and belief, the sweater remains in the custody
13 of the PPD, held as evidence in the robbery, but the PPD has never inspected or tested it for
14 hairs or other DNA.

15 39. After Mr. Hernandez was apprehended, and while Officer Hough and others
16 searched the surrounding area for additional evidence and Mr. Hernandez's female
17 accomplice, Officer Diventi returned to the Circle K.

18 40. When he returned to the Circle K, Officer Diventi watched surveillance video
19 of the robbery with the store's clerk, Jagmeet Bains. Based solely on his review of the
20 surveillance video, Officer Diventi radioed the following description of the female suspect
21 to his fellow officers:

22 *Medium complexion Hispanic female; age 25-30 years old;*
23 *Height 5'5", Weight: 180, [with] long black hair pulled back*
24 *into a ponytail, red Diamondbacks sweatshirt, blue jeans, white*
shoes, and a black purse on her right shoulder.

25 41. After watching the surveillance video and transmitting the description of the
26 unidentified female accomplice over the radio, Officer Diventi interviewed Mr. Bains about
27 the armed robbery.
28

1 42. After completing his interview of Mr. Bains, Officer Diventi processed the
2 interior of the Circle K for physical evidence.

3 43. Based on his review of the surveillance video, Officer Diventi collected
4 possible fingerprints from the cash drawer touched by Mr. Hernandez and a charity donation
5 box touched by his female accomplice.

6 44. PPD officers later matched the fingerprint found on the cash drawer to Miguel
7 Hernandez.

8 45. The PPD was unable to match the fingerprint on the charity donation box to
9 any person.

10 46. On May 19, 2011, PPD Sergeant Moller (#7717) instructed Officer Thomas
11 Baker (#9431) to attempt to identify the female suspect.

12 47. Officer Baker interviewed Officer Hough who avowed to Officer Baker that
13 he had seen the female suspect's face as she fled from him and could positively identify her.

14 48. Officer Baker ran a search for Mr. Hernandez's known associates; among
15 those listed in the results was Mr. Hernandez's ex-wife, Ms. Medrano.

16 49. According to Arizona Department of Transportation Motor Vehicle Division
17 ("MVD") records, Ms. Medrano was described a Hispanic female, 5'7", 175 pounds.

18 50. Ms. Medrano's MVD photo was taken approximately four years earlier (when
19 she was 19 years old), the physical description in the MVD records was based on her
20 appearance at that time.

21 51. Officer Baker printed Ms. Medrano's photograph from the MVD database.

22 52. Officer Baker presented Ms. Medrano's MVD photo (by itself) to Officer
23 Diventi and asked if the photo matched the suspect Officer Diventi had seen on the
24 surveillance video.

25 53. After looking at the single picture of Ms. Medrano, Officer Diventi told
26 Officer Baker that Ms. Medrano was "definitely the outstanding suspect."

27 54. Officer Baker then created a photo line-up including Ms. Medrano's MVD
28

1 photo and presented the line-up to Officer Hough.

2 55. Officer Hough identified Ms. Medrano's MVD photo as matching the female
3 suspect that fled from him on foot the night of the robbery.

4 56. Before making their respective photo identifications, Officer Hough did not
5 see the surveillance video and Officer Diventi did not see the suspect in person.

6 57. Before making their respective photo identifications, neither Officer Hough
7 nor Officer Diventi had ever seen Ms. Medrano in person.

8 58. Later, Officer Diventi presented the same photo lineup shown to Officer
9 Hough to Mr. Bains.

10 59. Mr. Bains was the only person to see Mr. Hernandez's female accomplice
11 face-to-face and close-up.

12 60. Mr. Bains did not identify the photo of Ms. Medrano in the photo line-up as
13 the person he believed most resembled the female accomplice; he selected a different
14 photograph in the photo line up.

15 61. Without a positive eyewitness identification and without any DNA evidence,
16 the PPD began surveillance on Ms. Medrano's grandmother's home in an effort to locate
17 and arrest Ms. Medrano.

18 62. At approximately 8:00 a.m. on May 21, 2011, PPD officers Benjamin Denham
19 (#7757) and Pamela Zielin (#8274) arrested Ms. Medrano outside of her grandmother's
20 house.

21 63. The officers advised Ms. Medrano why she was under arrest and told her that
22 she had the right to remain silent and the right to a lawyer.

23 64. Ms. Medrano immediately told the police:

24 "She was not involved in the armed robbery. She has not seen [Miguel]
25 for at least two weeks. They dated in the past, however are not together
26 right now. She never entered the Circle K that night and she never had
27 contact with the clerk. She denied running from officers who arrived on
28 scene. She heard about Miguel being arrested from his mother, and
believes **Miguel's new girlfriend is the one involved.** She only knows
that Miguel's new girlfriend's name is Christina [Ruelas] and she is a
Hispanic female. She continued to deny any involvement, and believes it

1 was another female **who just looked like her.**”

2 65. From the moment she was arrested, Ms. Medrano cooperated fully with the
3 PPD’s investigation of the armed robbery.

4 66. Ms. Medrano immediately and voluntarily provided fingerprint and DNA
5 samples to PPD officers at the South Mountain station.

6 67. When Ms. Medrano was booked into the jail, her belongings were seized and
7 inventoried.

8 68. Among the items in Ms. Medrano’s possession when she was arrested was her
9 driver’s license, bearing the same photo officers Hough and Diventi had used to identify her
10 as the female suspect in the armed robbery.

11 69. In her MVD photo, Ms. Medrano was 19 years old and weighed
12 approximately 175 pounds.

13 70. At the time of her arrest on May 21, 2011, Ms. Medrano was 23 years old and
14 weighed more than 200 pounds.

15 71. Ms. Medrano had given birth to her daughter, L.V., just six weeks before her
16 arrest.

17 72. Ms. Medrano repeatedly told PPD officers and jail personnel that she did not
18 commit the Circle K robbery and that the unidentified female accomplice was Mr.
19 Hernandez’s then-current girlfriend, Christina Ruelas.

20 73. Ms. Medrano’s defense counsel and Ms. Medrano’s grandmother also
21 identified Mr. Ruelas to PPD officers as Mr. Hernandez’s female accomplice.

22 74. After arresting Ms. Medrano based on a MVD photo identification by officers
23 Hough and Diventi, PPD officers did not review the surveillance video to confirm that Ms.
24 Medrano indeed looked like the female accomplice to the armed robbery.

25 75. The PPD investigators never asked Mr. Bains if Ms. Medrano, as she appeared
26 on May 23, 2011, resembled the female accomplice to the armed robbery.

27 76. Upon information and belief, the PPD did not investigate Ms. Ruelas as a
28

1 suspect in the armed robbery, did not examine her relationship with Mr. Hernandez and did
2 not include her photo in a line-up or otherwise present her to Mr. Bains or Officers Hough
3 and Diventi.

4 77. While Ms. Medrano was in police custody, the PPD acquired evidence that the
5 female accomplice in the surveillance video was Christina Ruelas, Mr. Hernandez' then-
6 current girlfriend.

7 78. Despite evidence of Ms. Ruelas' involvement in the crime, she has not, to this
8 day, been arrested or prosecuted for her role in the Circle K armed robbery.

9 **B. WRONGFULLY ARRESTED, MS. MEDRANO SPENDS SIX MONTHS IN CUSTODY**
10 **WHILE HER NEWBORN DAUGHTER YEARNs FOR HER MOTHER.**

11 79. Estella Medrano was held in the Maricopa County Jail on charges of Armed
12 Robbery from May 21, 2011 until August 10, 2011.

13 80. Several months after Ms. Medrano's arrest, while she was still in police
14 custody, the PPD's lead case agent told Ms. Medrano's defense counsel that the PPD was
15 "70% sure" that Ms. Medrano was not involved in the armed robbery.

16 81. Yet, Defendants continued to hold Ms. Medrano in custody and the County
17 Attorney objected to her release from jail and continued its prosecution of Ms. Medrano.¹

18 82. On August 10, 2011, over the objections of the County Attorney, Ms.
19 Medrano was released from jail and placed on home arrest under the supervision of Pre-
20 Trial Services.

21 83. While she was on home arrest, Ms. Medrano's defense counsel and/or her
22 investigator(s) contacted Christina Ruelas' father.

23 84. Upon information and belief, Ms. Ruelas' father positively identified his
24 daughter as the female accomplice to the armed robbery on the Circle K surveillance video.

25 85. Ms. Medrano's counsel informed the County Attorney of the identification
26 made by Ms. Ruela's father.

27 ¹ For the purposes of this Complaint, the office of the County Attorney of Maricopa County, Arizona, including its
28 agents/attorneys are collectively referred to as the "County Attorney."

86. On November 3, 2011, Ms. Medrano was released from custody and cleared of all charges.

87. Ms. Medrano was incarcerated during a crucial formative period in her daughter's life.

88. During Ms. Medrano's incarceration, her newborn baby, L.V., had little or no contact with her mother.

89. While Ms. Medrano was incarcerated, her aunt cared for L.V.

90. In jail, Ms. Medrano suffered from debilitating depression due to the separation from her child.

91. Ms. Medrano also suffered painful physical side effects of the separation because she was unable to breast feed her daughter.

92. As a direct and proximate result of Ms. Medrano's arrest and incarceration, Plaintiffs were deprived of their constitutionally protected rights.

COUNT ONE

VIOLATION OF 42 U.S.C. § 1983 (RIGHT TO BE FREE FROM UNREASONABLE SEIZURES)

93. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 89 as though fully set forth herein.

94. Ms. Medrano has a right under Fourth and Fourteenth Amendments of the United States Constitution to be free from unreasonable searches and seizures. U.S. Const. Amends. 4, 14.

95. Any seizure not supported by probable cause is inherently unreasonable.
Michigan v. Summers, 452 U.S. 692, 699–700, 101 S. Ct. 2587, 2592–93 (1981).

96. At all times relevant herein, the Defendants were state actors and their conduct was subject to 42 U.S.C. §§ 1983, 1985, and 1988.²

97. Defendants deprived Ms. Medrano of her constitutionally protected civil rights.

² “Private persons, jointly engaged with state officials in the challenged action, are acting ‘under color’ of law for purposes of Section 1983 actions.” *Dennis v. Sparks*. 449 U.S. 24, 27-28 101 S. Ct. 183, (1980).

1 98. Defendants arrested Ms. Medrano for armed robbery, placed her in jail, and
2 referred the matter for criminal prosecution.

3 99. Ms. Medrano was incarcerated for 81 days.

4 100. Ms. Medrano was separated from L.V.during that time.

5 101. At all times, Ms. Medrano complied with the investigation.

6 102. At the time of the investigation and her arrest, Ms. Medrano's physical
7 appearance did not match the physical description of the unknown female suspect.

8 103. Neither Officer Diventi, Officer Hough, nor Mr. Bains positively identified
9 Ms. Medrano in-person as the female suspect in the Circle K armed robbery.

10 104. Neither Officer Diventi, Officer Hough nor Mr. Bains identified Ms. Medrano
11 as the female suspect in the Circle K armed robbery based on a then-current photo.

12 105. Fingerprints were taken from the scene and PPD had a red Diamondbacks
13 sweater believed to be worn by the female suspect in the Circle K armed robbery in
14 evidence.

15 106. PPD had Ms. Medrano's fingerprints and DNA.

16 107. Despite these facts, PPD detained and charged Ms. Medrano without any
17 corroborating DNA or fingerprint evidence.

18 108. PPD had no witness statements, admissions, or even genuine circumstantial
19 evidence to connect Ms. Medrano to the Circle K armed robbery.

20 109. The only reliable eyewitness, Mr. Baines, did not positively identify Ms.
21 Medrano in the photographic lineup or in person.

22 110. PPD's lead case agent admitted to Ms. Medrano's defense counsel that the
23 PPD was "70% sure" that Ms. Medrano was *not* involved in the armed robbery.

24 111. At no time did PPD establish probable cause that Ms. Medrano was in any
25 way involved in the armed robbery.

26 112. Defendants instituted and/or continued the criminal prosecution of Ms.
27 Medrano without probable cause.
28

COUNT THREE
MUNICIPAL LIABILITY UNDER *MONELL*

124. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 122 as though fully set forth herein.

125. Defendants were, at all times relevant, agents of the City of Phoenix.

126. Defendants acted, upon information and belief, in execution of government policy or custom that may fairly be said to represent official policy. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694–95, 98 S.Ct. 2018, 2037–38 (1978).

127. As a direct and proximate result of Defendants' acts and/or omissions pursuant to official government policy, Plaintiffs suffered (without limitation) a deprivation of constitutional rights.

COUNT FOUR
FAILURE TO ADEQUATELY TRAIN AND SUPERVISE

128. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 126 as though fully set forth herein.

129. Adequately trained police officers adhere to rigorous investigative techniques to adequately identify criminal suspects prior to arrest.

130. Such techniques include (without limitation) objective photographic or in-person lineup identifications.

131. Police officers are regularly required to identify unknown criminal suspects.

132. It is obvious that inadequate training in identifying criminal suspects is likely to result in the violation of constitutional rights. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390, 109 S.Ct. 1197, 1205 (1989).

133. Of the six PPD officers involved in this case, none adhered to standard investigative policies to adequately identify Ms. Medrano as the unknown female suspect.

134. PPD officers Hough and Diventi did not review the surveillance video to confirm that Ms. Medrano indeed looked like the female accomplice to the armed robbery.

135. PPD's investigators never asked the only eye witness to the robbery, Mr.

1 Bains, if Ms. Medrano, as she appeared on May 23, 2011, resembled the female accomplice
2 to the armed robbery.

3 136. In fact, Mr. Baines selected an entirely different person in the photographic
4 lineup that contained a photo of Ms. Medrano.

5 137. This was the sole photographic lineup used in the “investigation” that led to
6 Ms. Medrano’s wrongful arrest.

7 138. The only “identifications” of Ms. Medrano were based on a four-year-old
8 MVD photograph shown to PPD officers by itself and without comparison to the
9 surveillance footage.

10 139. At the time of arrest, Ms. Medrano resembled neither the unknown suspect in
11 the surveillance footage nor her own four-year-old MVD photograph.

12 140. Defendants’ acts and/or omissions fall short of adequate criminal
13 identification techniques.

14 141. The policymakers of the City of Phoenix “can reasonably be said to have been
15 deliberately indifferent to the need” for adequately training police officers to conduct
16 criminal identifications without violating the constitutional rights of individual suspects. *Id.*

17
18 **WHEREFORE**, Plaintiffs request that the Court enter judgment against Defendants
19 providing the following relief:

- 20 A. Compensatory damages in an amount to be determined by the jury;
21 B. Punitive/exemplary damages;
22 C. An order enjoining/restraining Defendants from acts of retaliation.
23 D. An award of interest, costs, and reasonable attorney’s fees;
24 E. Any and all other remedies provided pursuant to 42 U.S.C. § 1983; and
25 F. All such other relief as the Court may deem just and proper.

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27 ///

1 DATED: May 22, 2013.

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3 AIKEN SCHENK HAWKINS & RICCIARDI P.C.

4
5 By /s/ Stephanie McCoy Loquvam
6 Alfred W. Ricciardi
7 James M. Cool
8 Stephanie McCoy Loquvam
9 *Attorneys for Plaintiffs Estella Medrano and*
10 *L.V.*

11
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on 22nd day of May, 2013, I electronically transmitted
14 this document to the Clerk's Office using the CM/ECF System for filing.

15 /s/ Roonie McFarland
16 Roonie McFarland
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